



Public Employees for Environmental Responsibility

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November 4, 2019

Regional Freedom of Information Officer
U.S. Environmental Protection Agency
Region 2
290 Broadway, 26th Floor
New York, NY 10007-1866

RE: FOIA REQUEST – CIVIL ENFORCEMENT

To whom it may concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests current information concerning EPA's civil enforcement and inspections program regarding the SDWA Underground Injection Control (UIC) Program in New York. Specifically, we are requesting:

1. The total number of permitted class II UIC wells in New York as of November 4, 2019.
2. Records tabulating or summarizing the number of civil judicial and administrative and criminal environmental enforcement cases both initiated and concluded in New York by EPA against the owners or operators of class II UIC wells, by year, during Fiscal Year 2010 and each subsequent Fiscal Year to FY 2019 (through November 4, 2019).
3. Records tabulating or summarizing the number of Federal Inspections conducted by EPA in New York of class II UIC wells, by year, during Fiscal Year 2010 and each subsequent Fiscal Year to FY 2019 (through November 4, 2019).

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because "disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor" (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of EPA and its employees. The subject of the request is government data on EPA enforcement and inspection activities for class II wells in New York. The number of enforcement actions, inspections, and UIC wells are identifiable activities of EPA.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The requested material would help the public understand the output of EPA’s civil and criminal investigation and enforcement program in New York with respect to Class II wells. The disclosure of the information will “likely contribute” to an understanding of government operations. This information is not in the public domain, and covers trends about enforcement actions and inspections over class II wells since 2010 in New York, which is a non-delegated program.

Class II wells include wells where fluid is injected to enhance recovery of oil and gas wells and wells used exclusively for the disposal of oil and gas waste. These wells can have significant environmental or human health issues associated with the injection processes, making EPA’s inspection and enforcement presence “meaningfully informative” and the data we are requesting significant to the public’s understanding of this program. The request will enable the public to see the relative EPA investment in the enforcement of a specific environmental and public health law in New York.

As these topics are the explicit focus of this request, the requested material is directly informative in relation to the request.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

The requested material concerns the level of federal anti-pollution enforcement in a specific region of the United States. In addition, the material concerns enforcement of an important major anti-pollution law. As such, the material would be informative to the public, at large.

The public at large is also interested in corporate malfeasance, particularly as it effects the public health and the environment. The general public also has a keen interest in whether EPA enforcement efforts and investments have slackened in recent years.

PEER intends to provide the requested information to the general public through:

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

PEER has a long history of attracting media and public attention to the internal workings of EPA, including the topic of this request.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.

This material is not publicly posted by EPA. The nature of the information should shed direct light on the quality, strength and extent of enforcement inside EPA.

The disclosure will contribute “significantly” to the public understanding of government operations or activities, compared to the level of public understanding existing prior to the disclosure and public disclosure will be enhanced significantly by the disclosure. The nature of the class II UIC program in New York and the agency’s policies and the Administrator’s statements support PEER’s position.

As I noted earlier in this appeal, EPA has not delegated this program to New York and is, therefore, the only agency permitting, inspecting and enforcing the requirements of EPA’s UIC Class II program in New York. There is no current information publicly available that covers our request, therefore the public’s knowledge gained by this disclosure will be enhanced significantly. If class II well injections are not done properly, significant environmental and health issues can result, which is why EPA permits, inspects and enforces these types of underground injections. EPA’s website states, “Extraction of oil and gas usually produces large amounts of brine. Often saltier than seawater, this brine can contain toxic metals and radioactive substances. Brines can damage the environment and public health if discharged to water or land. Deep underground injection of brines in formations isolated from underground sources of drinking water prevents soil and water contamination.” <https://www.epa.gov/uic/class-ii-oil-and-gas-related-injection-wells>. EPA’s inspections are designed to make sure the permittees are following the rules and that enforcement actions are taken against violators of those rules when appropriate and significantly enhance the public’s knowledge of EPA’s enforcement and inspection presence and numbers, which is currently nearly non-existent.

In fact, EPA recognizes that publicly releasing enforcement and inspection data will significantly enhance public knowledge compared to not disclosing this information. EPA states in its enforcement guidance, “Timely, accurate and complete data is critical for the EPA and the public to analyze and understand the state of compliance with environmental regulations. Complete and current data enhance the EPA’s ability to identify priorities and evaluate program needs and effectiveness consistently and appropriately. OECA continues to work to improve data quality. The EPA regions, states, territories and tribes should continue their efforts to ensure timely and accurate entry of compliance and enforcement data into the appropriate national database of record.” (page 9). <https://www.epa.gov/sites/production/files/2019-06/documents/fy-20-21-oeca-np-guidance.pdf>.

EPA’s website and publications are full of information, such as, “Actively publicizing these (enforcement and compliance) activities on a timely basis informs the public, the media, and the regulated community about EPA’s efforts to promote compliance and deter violations of environmental law.” See, e.g., <https://www.epa.gov/enforcement/overview-enforcement-process-federal-facilities#Publicizing>. EPA does this because it knows that releasing enforcement and

compliance data significantly increases the public's knowledge and engagement in its programs.

5. The extent to which disclosure will serve the requestor's commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor's commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-4187 or enugent@peer.org. I look forward to receiving the agency's final response within 20 working days.

Cordially,

A handwritten signature in cursive script that reads "Elizabeth Nugent".

Elizabeth Nugent
Legal Fellow